

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

TERESA WORRELL

Plaintiff,

v.

Civil Action No.: 1:19-cv-00498

Judge:

**DELTA EXPRESS SERVICES, INC.,
a North Carolina Corporation and its
Employee, Agent, Representative, and
Driver, RODERICK B. BILLINGSLEA,**

Defendants.

NOTICE OF REMOVAL

Now comes Delta Express Services, Inc. and Roderick B. Billingslea, by counsel, Bowles Rice LLP, (“Defendants”), and pursuant to 28 U.S.C. § 1332, 28 U.S.C. § 1441, and 28 U.S.C. § 1446, gives notice of the removal of the above-styled action from the Circuit Court of Mercer County to the United States District Court for the Southern District of West Virginia at Charleston. As grounds for removal the Defendants represent as follows:

1. Defendants were named in an Amended Complaint filed in the Circuit Court of Mercer County, West Virginia, on or about May 30, 2019, bearing Civil Action No. 19-C-42-DS.

2. The Amended Complaint alleges negligence as a cause of action against the Defendants. Specifically, Plaintiff alleges Roderick Billingslea was negligent and breached the common law duties of care when he was operating a vehicle and allegedly collided with the Plaintiff. Plaintiff Teresa Worrell alleges various types of damages that she claims were directly and proximately caused by that alleged negligence. Plaintiff further alleges that Mr. Billingslea was operating the vehicle within his scope of employment as an employee of Delta Express

Services, Inc.’s. Thus, she alleges that Delta Express Services, Inc. is liable under a *respondeat superior* theory for the driver’s negligence.

3. A certified and complete copy of the Mercer County Circuit Court file, including true and correct copies of all process, pleadings, and other documents served in the state court action, as well as the docket sheet for Civil 19-C-42-DS is attached as **Exhibit 1**.

4. According to 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” The original jurisdiction of this Court includes “all civil actions where the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between . . . citizens of different States[.]” 28 U.S.C. § 1332(a)(1).

5. This is a civil action over which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1332, and may be removed by Defendants pursuant to the provisions of 28 U.S.C. § 1441, because there is complete diversity as to all parties. Further, the Plaintiff jointly stipulated that the matter in controversy exceeds \$75,000.00, exclusive of interest and costs.

6. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b), because no more than thirty (30) days have passed since Defendants were served with the Complaint.

7. Pursuant to 28 U.S.C. § 1446(d), service and notice of the filing of this Notice of Removal is being given to Plaintiff. A true and correct copy of this Notice of Removal

is being filed with the Clerk of the Circuit Court of Mercer County, West Virginia, along with a Notice of Filing of Notice of Removal, a copy of which is attached as **Exhibit 2**¹.

COMPLETE DIVERSITY EXISTS AS TO ALL PARTIES

8. Plaintiff is a resident of West Virginia.

9. Defendant Delta Express Services, Inc. is a North Carolina corporation, with its principal place of business in North Carolina. *See*. Attached Information Report, **Exhibit 3**.

10. Defendant Roderick B. Billingslea is a resident of Georgia. *See*. Attached Information Report, **Exhibit 4**.

11. Accordingly, complete diversity of citizenship exists between the Plaintiff and the Defendants.

THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00

12. Plaintiff has stipulated that the damages in this case will exceed the statutory amount in controversy of \$75,000.00. *See*, Plaintiff's Affidavit, **Exhibit 5**²; *See*, 28 U.S.C. § 1446(c).

Wherefore, pursuant to 28 U.S.C. § 1441(a), this Court has original jurisdiction of this matter because “the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between . . . citizens of different States[.]” 28 U.S.C. § 1332(a)(1).

Respectfully submitted,

**DELTA EXPRESS SERVICES, INC.,
and RODERICK B. BILLINGSLEA,**

¹ Defendants filed the Notice of Filing of Notice of Removal in the Circuit Court of Mercer County on July 5th, 2019, via U.S. Mail, but delivery may be delayed due to the State holiday on July 5, 2019.

² Defendants will supplement this filing with Plaintiff's stipulation.

By Counsel,

/s/Unaiza R. Tyree

Stuart A. McMillan [WVSB # 6352]

Unaiza R. Tyree [WVSB #13253]

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CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2019, the foregoing Notice of Removal was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Unaiza R. Tyree

Unaiza R. Tyree (WVSB #13253)